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*Rehabilitation Hospital of Desert Canyon, LLC;*  
 10 *Encompass Health Rehabilitation Hospital of Las*  
*Vegas, LLC; and Encompass Health Rehabilitation*  
 11 *Hospital of Henderson, LLC*

12 **UNITED STATES DISTRICT COURT**  
 13 **DISTRICT OF NEVADA**

14 ENCOMPASS HEALTH REHABILITATION  
 HOSPITAL OF DESERT CANYON, LLC;  
 15 ENCOMPASS HEALTH REHABILITATION  
 HOSPITAL OF LAS VEGAS, LLC; and  
 16 ENCOMPASS HEALTH REHABILITATION  
 HOSPITAL OF HENDERSON, LLC,

17 Plaintiffs,

18 v.

19 XAVIER BECERRA, SECRETARY OF THE  
 20 UNITED STATES DEPARTMENT  
 OF HEALTH AND HUMAN SERVICES,

21 Defendants.  
 22

Case No.: 2:22-cv-01912-JAD-BNW

**UNOPPOSED MOTION FOR LEAVE  
 TO FILE AMENDED COMPLAINT**

23 Plaintiffs, Encompass Health Rehabilitation Hospital of Desert Canyon, LLC,  
 24 Encompass Health Rehabilitation Hospital of Las Vegas, LLC, and Encompass Health  
 25 Rehabilitation Hospital of Henderson, LLC (collectively “Encompass Health”), by and  
 26 through their undersigned counsel, hereby seek leave to file an amended complaint to  
 27 incorporate additional final agency decisions rendered by Defendant since Plaintiffs filed  
 28

1 their original complaint. The Defendant, through counsel, has indicated that he does not  
2 oppose the relief sought herein.

### 3 **BACKGROUND**

4 1. This is an action for judicial review of 189 final agency decisions involving  
5 various Medicare reimbursement disputes issued by the Medicare Appeals Council  
6 (“Council”) on behalf of Xavier Becerra in his official capacity as the Secretary of the U.S.  
7 Department of Health and Human Services (“the Secretary”). Encompass Health filed a  
8 consolidated Complaint for Judicial Review on November 11, 2022.

9 2. Encompass Health served the Secretary with the consolidated complaint on  
10 or about January 9, 2023.

11 3. On March 10, 2023, the Secretary filed an Unopposed Motion to Stay the  
12 Case until July 10, 2023 to allow sufficient time for Council staff to prepare the underlying  
13 administrative records. *See* 42 U.S.C. § 405(g) (incorporated by reference into the Medicare  
14 statute at 42 U.S.C. § 1395ff(b)).

15 4. Since Plaintiffs filed their complaint in this matter, the Council has continued  
16 to issue adverse reimbursement determinations as to Encompass Health’s pending appeals.  
17 Each of those determinations carries federal district court appeal rights pursuant to 42  
18 U.S.C. § 1395ff(b). As of the date of this submission, Encompass Health has received  
19 approximately 44 such determinations.

### 20 **DISCUSSION**

21 5. Plaintiffs wish to exercise their appeal rights as to the Council’s most recent  
22 unfavorable decisions. The bases for those decisions are substantially similar to the agency  
23 determinations included with Encompass Health’s original complaint.

24 6. Instead of filing a new complaint and subsequent motion to consolidate that  
25 case with the instant matter, Encompass Health proposes to file an amended complaint that  
26 incorporates the Council’s most recent decisions.

27 7. Federal Civil Rule 15 governs the process for amending pleadings. There is  
28 a strong public policy in favor of permitting amendment, and the Ninth Circuit has made

1 clear that Rule 15(a) should be applied with “extreme liberality.” *Underwood v. O’Reilly*  
 2 *Auto Enter., LLC*, 342 F.R.D. 338, 342 (D. Nev. 2022) (quotation omitted).

3 8. When weighing a motion for leave to amend, courts typically consider the  
 4 following factors: (1) bad faith; (2) undue delay; (3) prejudice to the opposing party; (4)  
 5 futility of the amendments; and (5) whether the plaintiff has previously amended the  
 6 complaint. *Id.*

7 9. None of the foregoing factors is present here. There is no bad faith because  
 8 Encompass Health is simply exercising its statutory appeal rights. The Secretary’s counsel  
 9 has not informed Plaintiffs that addition of the new agency decisions to the pending matter  
 10 will result in undue delay. The amended pleading would not be futile, and Encompass  
 11 Health has not previously amended its complaint.

12 10. Absent a showing of undue prejudice or a strong showing as to any of the  
 13 remaining factors, there is a presumption that leave to amend should be granted. *Id.*

14 11. Encompass Health was unable to amend the existing complaint as a matter  
 15 of right under Rule 15(a)(1)(A) because the Council’s most recent decisions were issued  
 16 between mid-April and mid-May, which was more than 21 days after Encompass Health  
 17 served the Secretary.

18 12. Encompass Health similarly cannot wait until the Secretary files his Answer  
 19 after July 10, 2023 to amend pursuant to Rule 15(a)(1)(B) because that would be more than  
 20 60 days after Plaintiffs received the Council’s most recent decisions. *See* 42 C.F.R. §  
 21 405.1130 (a party must file a complaint in federal court contesting a Council decision within  
 22 60 days of receiving such decision).

23 13. Granting Encompass Health’s motion would promote efficiency and judicial  
 24 economy because it would eliminate the need for Plaintiffs to file a second complaint, serve  
 25 the Secretary, and then file a motion to consolidate the new case with the instant matter.

26 ///

27 ///

28 ///

**CONCLUSION**

There is no evidence of prejudice, delay, bad faith, or futility. Encompass Health has not previously been given an opportunity to amend its complaint, and the Secretary does not oppose the relief sought herein. Therefore, the presumption in favor of leave to amend has not been overcome, and the Court should grant Encompass Health's motion and provide Plaintiffs with 10 days from the date of the Court's order to file an amended complaint.

Dated this 12<sup>th</sup> day of June, 2023.

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LLC; Encompass Health Rehabilitation  
Hospital of Las Vegas, LLC; and  
Encompass Health Rehabilitation Hospital  
of Henderson, LLC*

**IT IS SO ORDERED:**

  
UNITED STATES DISTRICT COURT JUDGE

DATED: June 13, 2023

**CERTIFICATE OF SERVICE**

Pursuant to Federal Rule of Civil Procedure 5(b), I certify that I am an employee of Lewis Roca Rothgerber Christie LLP, and that on the 12th day of June, 2023, I caused the foregoing **UNOPPOSED MOTION FOR LEAVE TO FILE AMENDED COMPLAINT** to be served by electronically filing the foregoing with the CM/ECF electronic filing system, which will send notice of electronic filing to:

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/s/ Melani Kim Rudkin

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